STATE STREET.

December 11, 2012

Via electronic submission: AIFMDconsultation@centralbank.ie

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Markets Policy Division
Central Bank of Ireland
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Consultation Paper CP 60 – Consultation on implementation of Alternative Investment Fund Managers Directive

Dear Sir/Madam:

State Street Corporation ("State Street") appreciates the opportunity to comment on the Consultation Paper 60 ("CP 60") issued by the Central Bank of Ireland ("Central Bank") on the implementation of the Alternative Investment Fund Managers Directive ("AIFMD"), in particular the opportunity to provide views on the adequacy of the AIF Handbook as a framework for the protection of investors in AIFs and whether the framework constitutes a proportionate regulatory regime for the relevant entity.

Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union ("EU"), State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With USD 23.4 trillion in assets under custody and administration and USD 2.1 trillion in assets under management, State Street operates in 29 countries and in more than 100 markets worldwide.[1] Our European workforce of 9,000 employees provides services to our clients from offices in ten EU Member States and includes 2,000 employees and 5 locations in Ireland.

[1] As of September 30, 2012.

General

The AIFMD represents an opportunity to fully reconsider the regulatory regime for non-UCITS in Ireland. State Street acknowledges that the Central Bank has taken this opportunity and has undertaken a full review of the regulatory regime for non-UCITS in Ireland and we strongly support this timely reassessment.

State Street welcomes the replacement of the 25 Non-UCITS Notices ("NU Notices") and 13 Guidance Notes with a single handbook and would recommend that going forward the Handbook should continue to be the repository for all policy decisions in relation to AIFs so that the AIFM regime in Ireland remains transparent and is comprehensively documented. This will necessitate periodic updates to the Handbook; however, as noted by the Central Bank, this is an organic document and periodic updates are hence to be expected.

Further to its submission on loan origination for QIF's, State Street firmly welcomes the Central Banks commitment to give this issue its full consideration in early 2013. Loan origination in the context of QIF's, soon to be QAIFs, is a feature absent in the current regime. It is an additional means of achieving an exposure to loan assets, an exposure to which is already permitted. We do not believe it contradicts concerns around shadow banking. We look forward to further dialogue on this important topic early in 2013.

In our response we have addressed the specific questions posed, followed by some additional comments on the proposed AIF Handbook.

Thank you once again for the opportunity to comment on the important matters raised within this CP. Please feel free to contact me or my colleague Mary McCarthy, should you wish to discuss State Street's submission in greater detail.

Sincerely,

Susan Dargan
Head of Global Services Ireland
State Street International

State Street response to the specific questions raised by the Central Bank of Ireland

1. **The Central Bank has previously placed significant reliance on the Promoter to underpin the formal regulatory regime by ensuring that only sizable entities with relevant experience could establish AIFs in Ireland, entities who could support AIFs in difficulty. To this end, the Central Bank has had a promoter approval process. We are now proposing to eliminate the promoter approval process and place reliance instead on the AIFM, taking into account the obligations on AIFM which the AIFMD imposes on them. For this to work, we are proposing to elaborate in more detail to clarify the obligations of directors when an AIF gets into difficulties. Is this the correct approach? The proposed QIAIF requirements differ significantly from the Qualifying Investor Funds ("QIFs") requirements previously in place. A number of requirements will no longer be applied because in our judgement, the AIFMD provides an appropriate level of protection, through the requirements applied to the AIFM or, through the AIFM, on the AIF. Do you agree with this approach?**

   State Street fully supports the abolition of the Promoter approval process for AIFs. While this may have been important element of the authorisation process when the Funds Industry in Ireland was in its infancy, the funds industry is now more mature, governance and supervision structures are more sophisticated and require a less cumbersome authorisation process which is competitive with other European domiciles. The promoter concept is not reflected in the AIFMD, which includes requirements regarding the AIFM authorization, capital adequacy and delegation. It is therefore an appropriate juncture at which to remove it.

   Furthermore, we feel that the enhanced organisational and governance structure within the AIFMD together with the Funds Corporate Governance Code adequately addresses the obligations and responsibilities of directors and do not feel it is necessary to specifically address director obligations in distressed situations.

   State Street would also like to take the opportunity to advocate that the Central Bank reconsider the promoter regime for UCITS at this time also. This would be the appropriate time to reassess the need for such a regime for UCITS given that since June 2011 the UCITS Managers or UCITS Self-Managed Investment Company ("SMIC") regimes are subject to enhanced governance and organisational requirements together with the introduction of a Corporate Governance Code in late 2011.

2. **QIFs authorised under the existing regime are not subject to investment and borrowing restrictions. However, in order to avoid circumvention of the Irish regulatory regime, they may not invest more than 50% of net assets in a single unregulated investment fund. The Central Bank is not proposing to change this limit of 50%. Indeed it is proposed to tighten the regime slightly by adding a provision to prohibit investment in excess of 50% in unregulated investment funds which are identical in terms of management and strategy. Do you agree with this approach? Do you think it is necessary to further address possible circumvention through investment in clone funds?**

We do not believe that it is necessary to address this scenario. On the basis that QIAIFs are only to be marketed to experienced and knowledgeable investors, we believe that disclosure of the nature of any investment should be sufficient. Further, since the investing fund is an Irish domiciled entity, we believe the sale of the underlying non-EU AIF will be governed in due course by the AIFM Directive's third country provisions. We would therefore suggest that the Central Bank does not need to consider this provision at this stage. It is also worth noting that the Central Bank threshold of 50% is significantly lower than the 85% Master Feeder threshold contained in the AIFMD which has comprehensive rules governing Master Feeder arrangements. The lower threshold in Ireland will significantly harm Ireland's competitiveness for this fund type.

3. **The Central Bank has permitted both QIAIFs and RIAIFs to use share classes in order to side pocket assets which have become distressed, subject to certain safe-guards. We are considering if open-ended QIAIF should be permitted to purchase assets and immediately place these in side-pockets. In that case the QIAIF would, in effect, no longer act as an open ended fund for the totality of the portfolio and investors would lose redemption rights in respect of part of their total holding. If suitable disclosure is provided do you consider that this option should be available to QIAIFs? Should a limit apply to such side-pocket arrangements? Can the QIAIF continue to be regarded as an open-ended AIF?**

   As noted, QIAIFs are intended for investment only by qualifying investors, therefore we agree with the Central Bank's consideration of allowing as much flexibility as possible, coupled with adequate disclosure, in relation to the use of side pocket investments. In our view the QIAIF can continue to be considered open-ended as it is only the portion of the assets which are held in the side pocket that are subject to restriction the remaining assets of the QIAIF are not.

4. **QIFs authorised under the existing regime are subject to requirements in relation to initial offer periods. In the case of QIFs which are real estate or private equity funds this period can be extended for a period of up to one year. We are considering if this period can be longer, up to 2 years, provided that the arrangement and the terms to apply to investors who invest after the investment strategy has been initiated are both clearly outlined at the commencement of the offering as the capital raising period. Do you consider that this should be permitted and what are the risks for investors who subscribe at the outset, particularly where the QIAIF has commenced investing?**

   We support the Central Bank in permitting this extension for QIAIFs and the additional flexibility it will offer.

5. **The Central Bank is proposing to discontinue the Professional Investor Fund ("PIFs") regime. This will mean that no new PIF structures will be authorised but the Central Bank will consider allowing existing PIFs to establish new sub-funds. What are stakeholders' views concerning the grandfathering provisions which should apply to**

PIFs? Should existing umbrella funds be permitted to establish new sub-funds where this category of AIF will not be provided for in the AIF Handbook?

PIFs may be invested in by investors who do not meet the QIF qualifying investor criteria and this means that there may be demand in the future for this type of fund from those categories of investors.

It is therefore appropriate to maintain the PIF category and the ability to establish PIFs as new single or umbrella funds or as new sub-funds to existing umbrellas. Promoters who have established PIF umbrella funds should be able to continue to use their existing platforms, without being required to incur further expenditure in launching QIAIF or RIAIF umbrellas.

We understand that the drafting work involved in amending the AIF Handbook to contain a short chapter addressing the requirements for this category of fund and as such do not see any downside in retaining this category of fund.

6. **The proposed RIAIF Requirements allow for the creation of an investment fund which is subject to less investment and eligible asset restrictions than the UCITS regime but is more restrictive than the QIAIF regime. In particular, key limits on investment in unlisted securities, single issuers and other investment funds have been raised. Do stakeholders agree that it is correct to create a different risk profile for RIAIFs compared with UCITS?**

We fully support the Central Bank's proposal for RIAIF requirements to allow for the creation of an investment fund which is subject to fewer investment and eligible asset restrictions than the UCITS regime but more restrictive than the QIAIF regime. In fact, State Street is of the view that the proposed restrictions for RIAIFs, particularly in relation to Financial Derivative Instruments ("FDIs"), need to be relaxed. Currently limits such as counterparty limits etc. replicate exactly those contained within the UCITS Notices. In order for the RIAIF to be a truly different proposition, these limits should be less restrictive, in line with the investment limits proposed i.e. approximately twice those permitted under UCITS.

In order for the RIAIF to be a vehicle for asset classes over and above those permitted by UCITS the applicability of the regulated market definition in Part I Section 1 (ii)(5) needs to be re-examined. If not, retail loan funds, for example, would not be permitted and this is a fund type the Central Bank had indicated it would consider for authorisation.

Following its recent consultation on UCITS, should the European Commission conclude that the UCITS rules should not be altered for long-term investment schemes and instead considers another directive to cover such investment types, then RIAIFs may be the natural fit. It would therefore be beneficial for the Central Bank to keep this in mind when drafting the RIAIF rules so that they are not too restrictive in terms of eligible assets or derivatives that would preclude managers from investing in long term assets such as property, infrastructure, private equity etc. which would lend themselves as asset classes to long term investment funds.

7. **Should RIAIFs be permitted to provide for the issue of partly paid units, particularly where the RIAIF is established as a venture capital or private equity fund? Notwithstanding that full disclosure may be provided regarding the capital commitments and drawdowns would retail investors readily grasp the nature of the obligation they have entered into?**

   Subject to appropriately robust disclosures, the proposal for partly paid units is something State Street would support.

8. **UCITS are permitted to invest in financial derivative instruments subject to detailed requirements including those relating to risk management procedures. It is intended that RIAIFs should, at least, be provided with the same possibilities in relation to derivatives. It is proposed to make that change now. We will also be open to discussing whether these can be extended where appropriate as the AIF Handbook is further developed in future. Do you agree with this approach? How should the rules on the use of financial derivative instruments differ for RIAIFs as compared with UCITS?**

   As noted in our response to Question 6, we fully support the Central Bank's proposal for RIAIF requirements to allow for the creation of an investment fund which is subject to less investment and eligible asset restrictions than the UCITS regime but more restrictive than the QIAIF regime. State Street opinion is that the restrictions in relation to FDIs need to be relaxed. As noted by the Central Bank, currently limits such as counterparty limits, leverage limits under the commitment approach etc. replicate exactly those contained within the UCITS Notices. In order for the RIAIF to be a truly different proposition, these limits also should be less restrictive, in line with the relaxation of the investment limits proposed i.e. approximately twice those permitted under UCITS.

9. **RIAIFs may invest in gold subject to appropriate disclosure requirements. However the markets for different commodities vary significantly. You are invited to provide views on whether the Central Bank should set out requirements for commodities as an asset class or wait for an application to consider this matter. You are also invited to indicate what type of safe-guards should be considered in that context.**

   Within commodities we believe the Central Bank should distinguish between precious metal commodities, which should be a permitted asset class for RIAIF due to their liquidity, trading volumes, etc., and other commodities Diversification could be achieved by a requirement for number of different storage locations and/or smelters. Other commodities should be permitted on a case by case basis where they are sufficiently liquid.

10. **The Central Bank has a requirement for a risk warning in relation to RIAIFs which invest in emerging markets. Is this still appropriate? As mentioned in paragraph 9, it is proposed to include specific risk disclosures for RIAIF gold funds. Is the proposed text**

suitable in this regard? Are there other asset classes for which a risk warning would be appropriate?

The requirement for risk warnings is adequately governed by the principles outlined in Chapter 1, Part 1 Section 5(xii). The Central Bank should avoid specifying which asset classes require risk warnings.

11. **AIFMs falling below the thresholds specified in the AIFMD, as referenced in footnote 5, are subject to registration requirements only. The Central Bank considers that RIAIFs and QIAIFs should be subject to all AIFMD requirements as they are authorised investment funds. Do you support this approach**

The thresholds contained in the AIFMD are included since funds falling below the threshold limits are not deemed to have potentially significant consequences for financial stability and a lighter regime is considered more appropriate. The costs of compliance for such funds with the AIFMD would be disproportionate and it is therefore appropriate the thresholds are disapplied unless the AIF wishes to avail of the passport in which instance the fund must comply with all requirements of the AIFMD. If the Central Bank fails to recognise the thresholds, it will subject Irish domiciled funds to more onerous regulatory requirements than their European counterparts affecting competitiveness for little perceived benefit. A registration and reporting regime is more appropriate for this small subset of AIFs.

12. **The AIFMD defines AIFs as collective investment undertakings which are not UCITS. Exempt Unit Trusts are not currently subjected to the domestic regulatory regime although as AIFs they will be subject to certain requirements under the AIFMD. Where the AIFM of the Exempt Unit Trust falls below the thresholds referenced in footnote 5 the AIFM will be subject to registration requirements. If the AIFM is above the threshold, the full AIFMD regime will apply. The Central Bank will in the near future look at the option of extending the domestic regulatory regime to Exempt Unit Trusts. What issues will arise from the extension of the regulatory regime to these Exempt Unit Trusts? In your view are there potentially unforeseen consequences which could arise?**

In summary State Street are of the view that the application of a regulatory regime to EUTs at product level is both unnecessary and would potentially conflict with the existing regulatory requirements applicable to qualifying investors in Exempt Unit Trusts ("EUT"), for example IORPs Directive. Furthermore there would be a significant negative cost impact of applying further regulatory requirements on trusts that are not, by their nature, offered to the public.

IORPS are out of the scope of AIFMD and all the pension fund investors in EUTs are IORPS. EUTs were approved by the Revenue Commissioners purely to facilitate Pension Funds being able to invest collectively in a manner they could already do individually (i.e., before EUTs, such funds – pre-FA 2000 actually paid tax). The creation of an EUT (and its approval by Revenue) simply allowed Pension Funds to retain the benefit of being "wholly exempt" while investing collectively. As such, it is entirely consistent and logical to consider

EUTs as merely a collection of IORPS which is how the Revenue Commissioners considers them and therefore EUTs should be exempted from AIFMD in the same way.

However, if the Central Bank intends to pursue the regulation of EUTs, we would strongly encourage the Central Bank to engage in an appropriate dialogue with EUT managers prior to developing any supervisory structure. There are significant variations in the usage of EUTs. Most providers have used these structures in a very similar manner to UCITS, albeit available exclusively to wholly tax exempt investors such as pension and charity funds, with some additional investment flexibilities and with lower costs and better speed to market than UCITS.

We would acknowledge that there are some merits in having a regulated status and being able to provide assurances to potential investors that they are investing in an authorised vehicle; however, it would be important the Central Bank apply any supervisory regime appropriately e.g. – the "Qualified Persons" criteria for QIFs would not seem to be entirely appropriate in all cases. While pension funds would generally qualify, certain charity investors may not.

We would be keen to retain the "speed to market", low set-up (legal) cost and investment flexibilities of the EUT structure and therefore would not support a UCITS-style regime being brought in for EUTs and would hope that the Central Bank would engage in a full dialogue with providers of EUTs in advance of regulating this fund type.

13. **We currently require that the calculation of performance fees payable by RIAIFs and QIAIFs must be verified by the depositary. We are leaning towards amending this rule to allow that a party other than the depositary could carry out the verification, provided it is a party independent from any party involved in or benefitting from the operations of the AIF or the AIFM. Do you agree with this change and who do you consider could carry out this role?**

Auditors already review the calculation of the performance fee as part of their review of the financial statements. The current requirement for the depositary to review the calculation of the performance fee, confuses the depositary's role of oversight of NAV with a duty (that does not exist) to ensure accuracy of NAV.

Furthermore, it is contrary to the objective of establishing a harmonised regulatory framework for AIFs. Additionally, it imposes a far too onerous responsibility (with associated costs) for depositaries to review performance fee calculations on an on-going basis.

We would suggest that the fund be required to appoint an appropriate third party to verify the calculation. In this model, the responsibility will lie with a party with the appropriate expertise to carry out this function, e.g. the auditors, the Manager, or a third party vendor. The depositary could, as in the current Competent Person requirements set out in

GN 1/00, and approve that appointment of the third party, adding a further check or control. This is in line with the requirements on depositaries in the AIFMD Level 2 draft regulations, which provide for the depositary performing due diligence on external valuers appointed by the AIF.

14. **RIAIFs and QIAIFs must comply with requirements in relation to the content of periodic reports, including a requirement to include a detailed portfolio statement which lists each investment. We are considering if a condensed portfolio statement should be permitted, which lists positions/exposures greater than 5% of net asset value. We are only considering this for QIAIFS. Do you agree with this approach? Do you consider that the full list should be available to unitholders and potential investors on demand?**

We agree and support the proposal to provide a condensed schedule of investments in the periodic reporting to unitholders. We also agree that 5% is an acceptable threshold, though we would suggest that if the schedule is available on request to investors there should be no need to include a schedule of investments. We agree that a full list should be available on request for existing investors as at the most recent financial reporting period. Such list should also be available for potential investors if the Fund Manager/Promoter chooses to provide it.

15. **Requirements applicable to fund administrators specify that the final check and release of each investment fund net asset value (NAV) is a core administration activity which must be performed by the fund administrator. Are there measures or protections which could be put in place to allow the Central Bank permit that fund administrators may publish a net asset value prior to the final check?**

Annex II of Chapter 5 Fund Administrator Requirements - Outsourcing Requirements CP60:

Paragraph 3.2: The final check and release of each investment fund NAV is a core administration activity which must be performed by the fund administrator. This review must be completed prior to the release of the NAV for dealing purposes and should be completed, signed and dated by a senior staff member within the fund administrator. In exceptional circumstances the fund administrator may release the NAV for dealing purposes provided the final check is performed on the following day[53]. Documentary evidence of this review must be maintained by the fund administrator and made available to the Central Bank on request.

Footnote 53: Where the NAV calculation is released by the outsourcing service provider the final check must be completed by the administration company on the following day.

Regarding Question 15 and its relation to section 3.2 in Annex II of Chapter 5, we propose that section 3.2 would say that "...the outsourcing service provider may release the NAV for dealing purposes provided the final check is performed on the following day." Rather than saying "...the Fund Administrator may release the NAV for dealing purposes provided the final check is performed on the following day." This would be consistent with the wording in footnote 53. It is also proposed that footnote 53 be copied across to the definition of "Core

Administration Activities" at the beginning of Chapter 5, this is an important clarifying footnote and again would be consistent with the footnote being included in the current outsourcing requirements definitions as per Annex II of the UCITS and NU Notices.

There are measures or protections which could be put in place to allow an outsourcing service provider to release the NAV for dealing purposes provided the final check is performed by the fund administrator the following day. This is consistent with Section 3.2 and footnote 53 of the outsourcing code but also with current practice where it is understood there are numerous cases provided for under exceptional circumstances to allow an outsourcing service provider to release the NAV for dealing prior to final checking by the Fund Administrator the following day.

The measures that would facilitate this are those which are already detailed in the eight requirements of Annex II and as per current practice generally, covering the oversight, control, management and documentation of the outsourced activity.

Intra-group outsourcing:
In addition to the outsourcing of activities to third parties, there are many instances where the outsourcing service provider is part of the same group as the fund administrator. This inherently provides for control and oversight of the outsourced activities and subsequent reduced risk. To reflect this there should be greater recognition and flexibility included where the outsourcing is being carried out intra-group as opposed to outsourcing to a third-party.

Achieving the requisite regulatory standards, particularly in the case of intra-group outsourcing could be met by models which involve a comprehensive process level review where the outsourcing service provider is an affiliated entity and both the fund administrator and the affiliated delegate might have for example an intra group global processing platform, applying for example common policies and procedures, internal control, continuous compliance oversight and system audits.

Transitional Arrangements

CP 60 does not currently include a section dealing with transitional arrangements. We believe such a section should be included, dealing particularly with the arrangements for existing AIFs and AIFMs.

Article 61 of AIFMD (Transitional Provisions) provides that existing AIFMs performing activities under AIFMD prior to 22 July 2013 shall take all necessary measures to comply with national law stemming from AIFMD and submit an application for authorisation under AIFMD within one year of that date. We believe that the intent of this transitional clause is to allow all existing AIFMs and AIFs until 22 July 2014 to complete their application for authorisation and comply in full with the provisions of AIFMD.

This approach is consistent with the approach taken by the Financial Services Authority in the United Kingdom

AIFMD Level 2 measures are not yet finalised and it has therefore become even more important for AIFMs to be allowed sufficient time to put in place appropriate processes to comply with AIFMD.

Additional Comments on the Proposed AIF Handbook

Chapter 1 Retail Investor AIF Requirements

While the availability of the Retail Investor AIF ("RIAIF") product in Ireland is important and a significant part of a credible fund offering from the jurisdiction it should not be used as a means of declining to authorize product under the UCITS regime where this is the preferred route. The Retail Investor AIF product offering allows Ireland to offer a fund product which provides a vehicle for investment into asset classes not currently permitted under UCITS but perhaps under consideration e.g. real estate, infrastructure, and unlisted companies.

Part 1 – General Rules
1. Retail Investor Restrictions

- (iv) Financial Derivative Instruments (3)(e)

This paragraph refers to a requirement for daily valuation of OTC derivatives, regardless of the fund dealing / valuation frequency. However, (vii) Valuation (6)(f) refers to a requirement for at least weekly valuation.

We request the Central Bank correct this inconsistency with a requirement for a minimum weekly valuation.

- (iv) Financial Derivative Instruments (5)(g)

"Risk-free" assets is not a concept captured in AIFMD and as such, given that the Central Bank is including it as a requirement in the Irish implementation of the Directive it would be useful if the Central Bank provided a definition of the assets which could be considered "risk-free" whilst bearing in mind the difficulties posed by the existing, highly restrictive definition provided by ESMA under the UCITS regime.

- (iv) Financial Derivative Instruments (10)

We presume this paragraph is intended to reflect ESMA's July 2012 Guidelines on ETFs and other UCITS issues. However, as currently drafted, it reads that the issuer concentration rules for the AIF itself need to take into account the exposures through the reinvestment of cash collateral. The ESMA guidelines (para 41) state that reinvested cash collateral should be invested in accordance with the diversification requirements applicable to non-cash collateral and non-cash collateral diversification (para 40(e)) states that there is no amalgamation of collateral with direct holdings of the fund.

It is important that this is clarified in the Central Bank's requirements.

- (vii) Valuation (6)(g)

We recommend that the applicability of this paragraph is extended to Contracts for Difference (CFDs) and Bond forwards which have Delta 1 correlation and freely available market prices.

- (xi) Share Classes (2)

The requirement that all share classes within the Retail Investor AIF must have the same dealing procedures and frequencies does not emanate from a requirement in the AIFMD and we believe it should be removed as a requirement provided there is sufficient disclosure in the Fund documentation. We are of the view that the Central Bank should permit, on a case by case basis, where the circumstances merit and there is adequate disclosure that the share classes within the AIF or a subfund could have differing dealing procedures and frequencies.

6. General Operational Requirements

- (ii) Dealing (3)

We question why only suspension of NAV for an Investment Limited Partnership is addressed here and there is no reference to the other legal structures such as investment companies or unit trusts.

Supervisory Requirements
Chapter 1 RIAIFs – Section 4
Chapter 2 QIAIFs – Section 4

We note that the Chapters on supervisory requirements constitute a consolidation of existing NU Notices and Guidance Notes, and we consider that such consolidation is beneficial.

As noted earlier in our response to Question , we feel that the enhanced organizational and governance structure within AIFMD together with the Funds Corporate Governance Code adequately addresses the obligations and responsibilities of directors and do not feel it is necessary to specifically address director obligations in distressed situations.

Section 4

(iv) (1) Replacement of depositary requires confirmation from the retiring and new depositaries that they are satisfied with the transfer of assets.

We question whether this confirmation provides any real meaningful benefit to unitholders.

(v)(3) CBI must be notified of any proposal to replace third parties/entities that have contracted with a management company.

In some instances, OTC counterparties will contract with the Management Company and we do not believe the intention behind this provision is to capture such arrangements. The wording therefore may need to be refined to ensure it captures the arrangements intended.

(vii)(2) In relation to amalgamations the depositary must be satisfied with the proposal and confirm that it is happy to put to the unitholders in writing.

This is ultimately a management decision. The Management Company has fiduciary obligations as they are ultimately making this decision and we do not believe it is appropriate that the depositary make this call.

(vii)(3) We would recommend this section is reworded as follows:

"The Central Bank may refuse to permit a proposal in its sole discretion having regard to the best interest of unitholders and the prudent regulation of the business of Retail Investor AIFs / Qualifying Investor AIFs."

Prospectus Requirements
Chapter 1 RIAIFs – Part 1 Section 5
Chapter 2 QIAIFs – Part 1Section 5

Section 5

(iv)
For QIAIFs, previously the Central Bank permitted investment in other unregulated funds, including an unregulated Master Fund, provided "equivalent protection "was in place. This was achieved by applying to the Central Bank for a derogation and appointing a custodian at the level of the unregulated scheme. In our view, this regime provides sufficient protection and safeguards for investors.

(vi) Valuation
For the sake of clarification, we request that references to "determined" or "value" are replaced with "calculate".

Annual and Half Yearly Reports
Chapter 1 RIAIFs – Section 7
Chapter 1 QIAIFs – Section 7

We note that Chapter One Section 7 (ii) and (iii) and Chapter Two Section 7 are additional requirements for Irish regulated RIAIFs and QIAIFs which are over and above those required by Chapter 3, section (xix) (the Transparency Obligations). The Transparency Obligations are very detailed and provide the shareholders with a significant amount of information which we believe

is sufficient. The additional reporting obligations are carried over from the Non-UCITS Notices and we believe the Central Bank should take this opportunity to remove some of these disclosure requirements. We believe that there is sufficient disclosure required under the AIFMD and the Transparency Directive without adding another level of disclosure requirements. We propose that the following disclosures be removed from the Handbook.

1. Chapter One ii (6) (c) – portfolio statement. We understand that this may change in light of the feedback on the condensed schedule of investments.
2. Chapter One ii (6) (f) – information on the investment funds in which the RIAIF has invested during the year. As the Central Bank is proposing a condensed schedule of investments, this paragraph may change.
3. Chapter One para ii (6) (i); section iii para 12 and Chapter Two (3) (g) - A list of exchange rates used in the report. It is questionable what added value this is providing for investors
4. Chapter One para ii (6) (j) and Chapter Two (3) (h) - A comparative table covering the last three financial years and including, for each financial year, at the end of the year.
5. Chapter One para ii (6) (m) and Chapter Two (3) (i) – Under AIFMD and draft AIFMD Level 2, there is no requirement for a depositary to prepare an annual report and this requirement should be deleted. As we are trying to achieve consistency across Europe, the requirement that Irish depositaries be required to report to shareholders would be purely a domestic requirement which would be disadvantageous for Irish depositaries.
6. Chapter One ii (6) (n) and Chapter Two 7 (j) – a report of transactions entered into with connected parties during the period, in accordance with paragraph 2. We propose that this paragraph is removed until the Central Bank has concluded on the disclosure requirements for transactions with connected parties.
7. Chapter One para ii (6) (p) – where the RIAIF is a fund of unregulated funds, the periodic reports must list the names of the underlying funds, their managers and their domicile. As the Central Bank is proposing a condensed schedule of investments, we propose that this requirement be removed.
8. Chapter One section iii para (5) – A statement of changes in the composition of the portfolio during the reference period. This report is a burden for funds to calculate and disclose and has minimal value. It is also a UCITS requirement. We would question why the Central Bank would consider it necessary to impose a UCITS reporting requirement on AIFs when then the AIFMD did not consider them necessary.
9. Chapter One Section iii para (13) – A RIAIF is required to disclose the results after tax for the half year and the interim dividend paid or proposed. As Irish funds are not subject to tax it is unclear what is the purpose of the reference to tax.

Chapter One section 7 (ii) (2) and iii (14) and Chapter Two section 7 ii (2) - This paragraph which is included in the Non-UCITS notices is currently waived by the Central Bank for Non-UCITS. We propose that this paragraph be removed from the Handbook until such time as the Central Bank has concluded on what is required and has concluded on the wording.

Chapter 3 – Alternative Investment Fund Manager Requirements

State Street fully supports the Irish Fund Industry Association's (IFIA) detailed response on this chapter and would highlight the following points:

Proportionality will be a key element to the appropriate implementation of the AIFMD requirements in Ireland and should apply as per the Level II text to areas such as procedures/organisational requirements. The provision for half-yearly accounts would appear not to observe this principle.

In paragraph 2 of the Organisational Requirements (vi) a reference to scale and complexity, as distinct from just nature is necessary and is consistent with the criteria the Central Bank has applied previously in assessing the appropriateness of such arrangements for UCITS.

There is a need for greater clarity and consistency around unregistered/unregulated etc. authorised vs. regulated etc.

Subject to proportionality considerations, terminology and requirements relevant to the AIFMD and UCITS regimes should be reasonably consistent as it should be an option to adopt similar internal arrangements within a group of companies to comply with both.

We are concerned about the proposal that shareholders complete IQs. Exemptions should be available for those authorised/regulated by CBI or overseas regulators.

Chapter 4 – AIF Management Company Requirements

The scope and applicability of this Chapter could benefit from clarification

Chapter 5 – Fund Administrator Requirements incl. Annex 2 on outsourcing
Annex II - P264/265

3.2 The final check and release of each investment fund's NAV is a core administration activity which must be performed by the Fund Administrator. This review must be completed prior to the release of the NAV for dealing purposes and should be completed, signed and dated by a senior staff member within the Fund Administrator. In exceptional circumstances the Fund Administrator may release the NAV for dealing purposes provided the final check is performed on the following day. Documentary evidence of this review must be maintained by the Fund Administrator and made available to the Central Bank on request.

We suggest that the above paragraph should be more accurately reworded as follows (changes highlighted):-

3.2 The final check and release of each investment fund NAV is a core administration activity which must be performed by the Fund Administrator. This review must be completed prior to the release of the NAV for dealing purposes and should be completed, signed and dated by a suitably qualified staff member within the Fund Administrator. In exceptional circumstances the Outsourcing Service Provider may release the NAV for dealing purposes provided the final check is performed on the following day by the Fund Administrator. Documentary evidence of

this review must be maintained by the Fund Administrator and made available to the Central Bank on request.

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3.4 The Fund Administrator must inform the Central Bank in writing of any activity to be outsourced.

We believe the Central Bank should clarify this statement as it is too broad ('any') and should make a distinction between the requirements for core administration activities and non-core administration activities.

Chapter 6 – AIF Depositary Requirements

Para (Page No)	Comments
Para 1 P 275	AIFMD will not apply to all non-UCITS schemes, some funds will not be regulated under AIFMD e.g. schemes with a small level of assets or other schemes, such as exempt unit trusts may not be covered. The application of the AIF Depositary Requirements to *"unregulated AIFs established in Ireland"* is too broad and should be clarified.
Intro Para P 278	Above the Section (i) entitled "*Eligibility Criteria*", we suggest it be clarified that the AIF Depositary Requirements do not apply to the exempted categories of AIFs, such as AIFs whose assets are below €500 million threshold and schemes not otherwise covered by AIFMD.
Art 1(c) P 278	The text of Art 1(c) regarding the eligibility of firms that are not credit institutions or MiFID firms should be amended for consistency with Article 21(3).
Art 1 P 278	The AIF Depositary Requirements should clarify (at the end of Art 1) that Central Bank may in its discretion authorise a separate category of depositary for AIFs that are closed-ended that fall within the scope of Article 21(3).
Art 4 P 279	Below Art 4 on page 279, we suggest an additional paragraph be included to reference Article 21(1) i.e. that a single depositary be appointed for each AIF.
Art 2 P 281	The word "*must*" in Articles 2(a)(i), 2(a)(ii), 2(b)(i), 2(b)(ii) and 2(b)(iii) should be replaced with "*shall*" in order to be consistent

	with the wording of Article 21(8)(a) and (b) of the Directive.
Art 3(c) P 282	Remove reference to "or the depositary contract" – this is broader than Article 21(9) of the Directive and it is not clear what risks the Central Bank is trying to mitigate here.
Art 4 P 282	**Depositary Report** Under AIFMD and draft AIFMD Level 2, there is no requirement for a depositary to prepare an annual report and this requirement should be deleted. As we are trying to achieve consistency across Europe the requirement that Irish depositaries be required to report to shareholders would be purely a domestic requirement which would be disadvantageous for Irish depositaries. Firstly, if the Depositary has any safekeeping issues to raise, it is obligated to raise these to the AIFM. The Auditors, as part of their work are obliged to raise their findings to the AIFM. The AIFM is required to report and disclose issues to investors. The depositary report is at best a duplication of these reporting requirements. The risk which it appears the Central Bank is seeking to address is more appropriately addressed by the requirement for AIFs, AIFMs to report material breaches as they arise to the Central Bank. Under the Corporate Governance Code AIFs are required, among other matters, to (i) ensure that all risk pertaining to an AIF are identified, monitored and managed at all times, (ii) implement the processes and systems to monitor and manage risks identified by the AIF or its service providers and (iii) to receive prompt reports in relation to that risk pertain to an AIF so that such risks can be managed. Such requirements emphasise the control and risk mitigation procedures that AIFs must adopt. The annual reporting of historic breaches by the Depositary is not as effective as prompt reporting coupled with a requirement to take immediate remedial action in the interests of investors, which is adequately addressed for Irish AIFs.
Art 5 P 283	With regard to the reporting of material matters, the comments above are relevant. The reporting of material breaches by the depositary is not governed by AIFMD and this provision should be deleted from the Central Bank AIF Depositary Requirements. Reporting by depositaries to the Central Bank under AIFMD is governed by draft AIFMD Level 2 which is already reflected in the AIF Depositary Requirements. Article (viii) 1 on page 288 properly reflects Article 21 (16) of the AIFMD in terms of the depositary's obligation to make available to the CBI all information it has obtained while performing its duties.

	We suggest that no further provision be made in this regard in the Depositary Chapter. Furthermore, CP59 is '*de facto*' the reporting obligation imposed on depositaries. However, we were disappointed with the CBI feedback on this consultation paper considering the lack of clarity surrounding some of the terms used by the CBI e.g. 'material', 'significant' which we have brought to the attention of the CBI both before and during CP59. We request the opportunity to engage further with the CBI to ensure that from a reporting perspective Irish depositaries are not at a competitive disadvantage to their European counterparts.
Art 6 P 283	Where a depositary acts in relation to a RAAIF or a QIAIF, we believe that as the AIF or the AIFM is primarily responsible for the investment policy of the fund, it should be the one that confirms to the Central Bank that the authorised AIF has the procedures in place to ensure that the underlying investment fund meets the Central Bank's regulatory requirements and that it will regularly review the operation of these procedures to ensure that the underlying investment fund continues to meet the Central Bank's regulatory requirements. As additional comfort to the Central Bank, the depositary will be monitoring these guidelines on a periodic basis. This requirement is not currently contained within the AIFMD and should not be a depositary task.
Art 4 P 284	It is not a function of the depositary to issue written confirmations of entry in the register or to issue certificates or bearer securities. The issue of securities falls within the authority and discretion of the directors/AIFM. As a matter or practice, confirmations of ownership and certificates of ownership are issued by the AIF/AIFM, or, on behalf of the AIF, by the transfer agent and the Depositary has no role in relation to this function. To the extent that the Central Bank would like clarity on the treatment of bearer securities, this could be specified the Central Bank's application forms. In the event that a particular AIF wishes to issue certificates that should be dealt with on a case by case basis, with reference to the fund's constitutional documents.
Art 5 P 284	This reflects a legacy requirement of the NU Notices, which is not required under AIFMD and should be removed. If there is an issue with the transfer of assets, this would be a matter for the Depositary to regularise as part of its day-to-day safekeeping obligations. This obligation is creating unnecessary additional paperwork which is not required.

	Article 89 'Safekeeping duties with regard to assets held in custody', of the draft Level 2 requirements supersedes this historic requirement and set out a number of obligations which are set out below: a) the financial instruments are properly registered in accordance with Article 21(8) (a)(ii) AIFMD; b) records and segregated accounts are maintained in a way that ensures their accuracy, and in particular record the correspondence with the financial instruments and cash held for AIFs; c) reconciliations are conducted on a regular basis between the depositary's internal accounts and records and those of any third party to whom custody functions are delegated in accordance with Article 21(11) AIFMD; d) due care is exercised in relation to the financial instruments held in custody in order to ensure a high standard of investor protection; e) all relevant custody risks throughout the custody chain are assessed and monitored and the AIFM is informed of any material risk identified; f) adequate organisational arrangements are introduced to minimise the risk of loss or diminution of the financial instruments, or of rights in connection with those financial instruments as a result of fraud, poor administration, inadequate registering or negligence; g) the AIF's ownership right or the ownership right of the AIFM acting on behalf of the AIF over the assets is verified. As depositaries will need to fulfill these obligations in order not to be liable, it is in their best interests to ensure all of the above are met. In that regard, the Central Bank can take comfort and should not need the unnecessary comfort of an additional confirmation from the depositary which is beyond AIFMD requirements, and at best, an additional administrative burden.
Art 6,7, 8 P 284	Art 6 to 8 – Policy requirements concerning permitted markets for retail AIFs are outside of the scope of AIFMD, are not addressed in the NU Notices and should not be included in the AIF Depositary Requirements. Depositary obligations are to safe-keep the assets of the AIF and not to determine what markets the fund can invest in. The obligation regarding permitted markets sits with the AIF/AIFM as it deals with

	portfolio management and not safekeeping of assets. Taking into account Article 89 above, these suggested obligations create unnecessary additional paperwork. If a depositary cannot provide safekeeping for the assets entrusted to it, it would be liable, which constitutes an adequate safeguard for investors.
Art 9 P 285	This requirement is not specified in the AIFMD and should be deleted from the AIF Depositary Requirements. It is our understanding that the AIFMD Level 2 implementing measures cover in detail the valuation aspects of am AIF and it is very clear that the AIFM has an extensive role to play in this and in particular, AIFMs shall establish, maintain, implement and review, for each AIF they manage, written policies and procedures that ensure a sound, transparent, comprehensive and appropriately documented valuation process. The valuation policy and procedures shall cover all material aspects of the valuation process and valuation procedures and controls in respect of the relevant AIF. In addition with regard to the calculation of the NAV, Article 72 below is relevant: *Article* *72* *Calculation of the net asset value per unit or share* 1. An AIFM shall ensure that for each AIF it manages the net asset value per unit or share is calculated on the occasion of each issue or subscription or redemption or cancellation of units or shares, but at least once a year. 2. An AIFM shall ensure that the procedures and the methodology for calculating the net asset value per unit or share are fully documented. The calculation procedures and methodologies and their application shall be subject to regular verification by the AIFM, and the documentation shall be amended accordingly. 3. An AIFM shall ensure that remedial procedures are in place in the event of an incorrect calculation of the net asset value. 4. An AIFM shall ensure that the number of units or shares in issue is subject to regular verification, at least as often as the unit or share price is calculated. With regard to in-specie subscriptions and redemptions, we do not believe they should be treated any differently or need any additional attestation, if the AIF is following its valuation and NAV procedures correctly. It is clear from Article 72 above that the AIFM will be required to have the procedures and verifications in

	place to ensure in-specie subscriptions and redemptions are accurately calculated in accordance with the fund documentation. As depositary, we are responsible for the safekeeping of assets and not the valuation of the fund. This is the responsibility of the AIFM.
Art 10 P 285	This requirement is not specified in AIFMD and should be deleted. Auditors already review the calculation of the performance fee as part of their review of the financial statements. The current requirement for the depositary to review the calculation of the performance fee, confuses the depositary's role of oversight of NAV with a duty (that does not exist) to ensure accuracy of NAV. Furthermore, it is contrary to the objective of establishing a harmonised regulatory framework for AIFs. Additionally, it imposes a far too onerous responsibility (with associated costs) for depositaries to review performance fee calculations on an on-going basis. We would suggest that the fund be required to appoint an appropriate third party to verify the calculation. In this model, the responsibility will lie with a party with the appropriate expertise to carry out this function, e.g. the auditors, the Manager, or a third party vendor. The depositary could, as in the current Competent Person requirements set out in GN 1/00, and approve that appointment of the third party, adding a further check or control. This is in line with the requirements on depositaries in the AIFMD Level 2 draft regulations, which provide for the depositary performing due diligence on external valuers appointed by the AIF.
Art 1 P 287 3rd paragraph	The liability for depositaries is set out in very extensive and prescriptive terms under AIFMD and applies to negligent or intentional failure to fulfill its obligations pursuant to the Directive (see Article 21(12)). The liability for Depositaries should not be extended beyond the scope of AIFMD and in particular to compliance with the AIF Handbook which may contain requirements over and above the AIFMD. The basis of the liability provisions is to ensure conformity throughout the EU on the liability of depositaries and this is key from a harmonised depositary approach.

Art vii. 1. P 288	The final sentence of this Article needs to be completed.
Art 3 P 289	Art 3 should be deleted as is not a requirement of the AIFMD. The subject of review meetings is addressed under the Central Bank's administrative sanctions procedures and need not be specified here.
Art 4 P 289	This requirement should be deleted. An Irish depositary cannot reasonably be expected to safeguard/control or be liable for the contents of an offshore scheme's offering document. It should be understood that for foreign funds the Depositary has no legal ability to change, alter or insist on certain conditions being included in the offering documentation as the depositary is not responsible for the accuracy of the document. In many cases the Depositary may not be informed of changes to offering documentation and should not be imposed with requirements relating to its contents.